INDEX

CITATIONS

Cases—Continued

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. —, ORIGINAL

STATE OF ALABAMA, COMPLAINANT

v.

STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS MCKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST, DEFENDANTS

OPPOSITION OF DEFENDANTS GEORGE M. HUMPHREY, DOUGLAS McKAY, ROBERT B. ANDERSON AND IVY BAKER PRIEST TO COMPLAINANT'S MOTION FOR LEAVE TO FILE COMPLAINT

Defendants George M. Humphrey, Douglas McKay, Robert B. Anderson and Ivy Baker Priest oppose the complainant's motion for leave to file its complaint against said defendants, on the following grounds:

1. The complainant has no standing to sue;

2. The complaint fails to state a claim on which relief can be granted against these defendants;

3. The suit is, in legal effect, one against the United States, which has not consented to be sued; and

4. The United States is an indispensable party.

STATEMENT

The State of Alabama, as complainant, seeks to invoke the original jurisdiction of this Court under Article III, Section 2 of the United States Constitution and 28 U. S. C. 1251. The complaint names as defendants the States of California, Louisiana, Texas and Florida, and George M. Humphrey, Secretary of the Treasury, Douglas McKay, Secretary of the Interior, Robert B. Anderson, Secretary of the Navy, and Ivy Baker Priest, Treasurer of the United States. For relief the complaint seeks a decree declaring that the Submerged Lands Act (Public Law 31, 83d Cong., 1st Sess., c. 65) is unconstitutional, and that it gives to the defendant States no rights in the submerged lands or resources of the marginal sea and no rights beyond three miles from their coasts; enjoining the individual defendants from making any payments of funds derived from the submerged lands, and requiring the defendant States to restore any such payments already received by them; enjoining the defendant States from asserting control over the submerged lands and resources of the sea bed within nine miles of their coasts on the Gulf or within three miles of

their coasts elsewhere, and enjoining the individual defendants from acquiescing in such assertions; enjoining Texas, Louisiana and Florida from asserting control over marine animal and plant life in the waters overlying said lands, except for non-discriminatory police regulations within three miles of the coast, and declaring other regulations with respect thereto unconstitutional and void; and enjoining Texas, Louisiana and Florida from asserting jurisdiction over the high seas more than three miles in the Gulf of Mexico.

Apart from Paragraphs XII, XV, XVIII, XXIV, XXVII, XXX and XXXVI of the complaint and Paragraph 7 of the prayer for relief, to which special reference will be made below, the allegations of the complaint may be summarized as averring that the States and individual defendants are acting or intend to act as authorized, or required, by the Submerged Lands Act, the States by exercising dominion over the submerged lands granted thereby, and the individual defendants by acquiescing in such acts and in paying over, or intending to pay over, funds derived from the submerged lands required by the Act to be paid over. In addition, it is alleged that Texas, Louisiana and Florida are asserting dominion over an area extending three leagues into the Gulf of Mexico and that the individual defendants are acquiescing in that assertion.

On October 26, 1953, this Court granted the defendants forty days for the filing of objections to Alabama's motion for leave to file its complaint.

ARGUMENT

In these objections we shall not address ourselves at all to the allegations of Paragraphs XII, XV, XVIII, XXIV, XXVII, XXX and XXXVI of the complaint nor to Paragraph 7 of the prayer for relief. Those paragraphs concern themselves solely with alleged rights of citizens of Alabama to fish off the coasts of Texas, Louisiana, and Florida; with allegedly illegal infringements or threatened infringements on those rights; and with a prayer for an injunction against such infringements. No action or acquiescence by the Federal officers is alleged and no relief asked against them in this particular.[1] If, as these defendants contend, the remaining allegations of the complaint, which do concern them, likewise fail to state claims entitling Alabama to relief against these defendants, then

[1] The constitutionality and interpretation of the Submerged Lands Act is not involved in these averments, since the allegedly illegal acts are charged to be occurring and threatened within the political boundaries of the defendant States before the passage of the Act as well as within the area which those States are alleged to claim under the Act. Therefore, insofar as the sufficiency of this part of the complaint or the standing of the complainant to sue on this issue is concerned, the constitutionality or interpretation of the Submerged Lands Act is in no way involved.

leave to file the complaint should be denied.

I

THE COMPLAINANT HAS NO STANDING TO SUE

Alabama asserts that it has standing to sue both because of its sovereign capacity as a State (Paragraph XXXIV) and as quasi-sovereign and *parens patriae* for its citizens (Paragraph XXXV). However, on the facts alleged it appears that in neither capacity does Alabama have a legal interest which can be the basis of an original action in this Court, and this is true quite apart from the constitutionality of the Submerged Lands Act or the legality of the acts or intended acts of the defendants. For the purposes of this point let it be assumed, for the sake of the argument, that Congress exceeded its constitutional power in granting the submerged lands to the States, and let it be further assumed, again without admitting that it is so, that the defendant States and Federal officers are misinterpreting the Act in their assumptions of dominion or acquiescence therein. Even on those assumptions Alabama's complaint should not be permitted to be filed since it fails to show how Alabama is injured or has any standing to sue.

A. AS A SOVEREIGN STATE, ALABAMA HAS NO STANDING TO SUE

The constitutional provision vesting original jurisdiction in this Court in cases "in which a

State shall be Party" (Art. III, Sec. 2, Clause 2) does not obviate the necessity of there being a case or controversy in which the complainant shall have a justiciable interest. In cases where states have attacked the constitutionality of Federal legislation, this Court has more than once found it necessary to dismiss the complaints because the complainants were not proper parties plaintiff. For example, in *Texas* v. *Interstate Commerce Commission*, 258 U. S. 158, when Texas attempted to attack the constitutionality of the legislation establishing the Railroad Labor Board, this Court stated at page 162:

> The bill is of unusual length, sixty-five printed pages. Much of it is devoted to the presentation of an abstract question of legislative power—whether the matters dealt with in several of the provisions of Titles III and IV fall within the field wherein Congress may speak with constitutional authority, or within the field reserved to the several States. The claim of the State, elaborately set forth, is that they fall within the latter field, and therefore that the congressional enactment is void. Obviously, this part of the bill does not present a case or controversy within the range of the judicial power as defined by the Constitution. It is only where rights, in themselves appropriate subjects of judicial cognizance, are being, or about to be, affected prejudicially by the application or enforcement of a statute that its validity may be called in question by a suitor and deter-

mined by an exertion of the judicial power. *Georgia* v. *Stanton*, 6 Wall. 50, 73, *et seq.*; *Muskrat* v. *United States*, 219 U. S. 346, 361; *Stearns* v. *Wood*, 236 U. S. 75, 78.

Again in *New Jersey* v. *Sargent*, 269 U. S. 328, where the validity of the Federal Water Power Act was in question, the Court stated at page 334:

> On reading the present bill we are brought to the conclusion, first, that its real purpose is to obtain a judicial declaration that, in making certain parts of the Federal Water Power Act applicable to waters within and bordering on the State of New Jersey, Congress exceeded its own authority and encroached on that of the State, and secondly, that the bill does not show that any right of the State, which in itself is an appropriate subject of judicial cognizance, is being, or about to be, affected prejudicially by the application or enforcement of the Act.

See also *Massachusetts* v. *Mellon*, 262 U. S. 447; *Florida* v. *Mellon*, 273 U. S. 12.[2]

---

[2] It goes without saying that it is not enough for Alabama merely to allege that the Submerged Lands Act is unconstitutional (see Paragraph XXXVIII of the complaint) or to pray for a declaration to that effect (see Paragraphs 1, 2, and 3 of the prayer). This Court has repeatedly held that it will not render a declaratory judgment on the constitutionality of an act of Congress except when a justiciable issue is presented on which substantive relief against the defendants can be based. Thus in *Massachusetts* v. *Mellon*, 262 U. S. 447, the Court said at 488:

> We have no power *per se to* review and annul acts of Congress on the ground that they are unconstitu-

The complainant seeks to establish its right to sue as a sovereign on two bases, both of which it relates to its equal footing with the other states. First, it appears to argue that it, and the other states, have equal undivided interests in all of the submerged lands over which the Supreme Court has held that the Federal government has paramount rights, and that the Federal government is committing a breach of trust when it attempts to divide the lands among the coastal states. Its second argument appears to be that

---

tional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. It amounts to little more than the negative power to disregard an unconstitutional enactment, which otherwise would stand in the way of the enforcement of a legal right.

And the federal courts exercise the same limitation on the exercise of their jurisdiction where a declaratory judgment is sought as to the interpretation of a statute. Thus in *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, the Court said at 462:

> The declaratory judgment procedure may be resorted to only in the sound discretion of the Court and where the interests of justice will be advanced *and an adequate and effective judgment may be rendered.* [Italics added.]

And in *Coffman* v. *Breeze Corporations*, 323 U. S. 316, 324:

> The declaratory judgment procedure is available in the federal courts only in cases involving an actual case or controversy * * * where the issue is actual and adversary * * * and it may not be made the medium for securing an advisory opinion in a controversy which has not arisen.

the allocation of the submerged lands to the coastal states has violated Alabama's right to equal footing since, under the Act, Texas, Louisiana, and Florida claim three leagues, whereas Alabama's boundary is but three miles, and also since the defendant states have been given allegedly more valuable lands than has Alabama. Admitting that Alabama, like all of the states, has a right to "equal footing," neither of its present contentions has any merit.

1. Alabama is not a beneficiary of any trust of the offshore lands or their proceeds

The complaint alleges that the United States holds the paramount rights in the submerged lands off the shores of California, Texas, Louisiana and Florida, the resources therein, and the revenues derived therefrom, "as trustee for all the states and citizens of the United States, including the State of Alabama and the citizens thereof" (Paragraphs IX, X, XIII, and XVI). It then alleges that pursuant to the provisions of the Submerged Lands Act, the various defendants are committing breaches of that trust (Paragraphs XXI, XXIII, XXVI, XXIX, and XXXI-XXXIII). In Paragraph XXXIV (A) it is alleged that Alabama's right to equal footing is being impaired by this breach of trust, thus giving Alabama standing to sue. However, the claim of trust is not supported by any factual allegations, resting solely on the assertion that the

trust exists as a matter of law. But neither the complaint nor the supporting brief cites any law, constitutional, statutory or decisional, to support Alabama's contention, and it is submitted that none can be found.

While the interest of the United States in property held by it has sometimes been described as a trust, the trust has generally been spoken of as existing for the benefit of the people, rather than the States as such. For example, in *Light* v. *United States*, 220 U. S. 523, 537, the Court said, " 'All the public lands of the nation are held in trust for the people of the whole country.' *United States* v. *Trinidad Coal Co.*, 137 U. S. 160. And it is not for the courts to say how that trust shall be administered." In *United States* v. *California*, 332 U. S. 19, the submerged lands here in question were assumed to be held "in trust" when the Court said at page 40, "The Government, which holds its interests here as elsewhere in trust for all the people, * * *."

Actually, although the cases may use the trust language, it is language not used in a technical sense, but only to indicate that the property is held in the public interest. The authorities cited under Point II below to support the proposition that the United States has absolute power to dispose of property held by it (see pp. 22–25, 29–30, *infra*), amply demonstrate that federal property is not held "in trust" as that term is used in private law. And in any event, if there be a trust of

any kind, the *cestui* is the entire people and not any State or group of States.[4]

[4] The language of *Shively* v. *Bowlby*, 152 U. S. 1, might at first glance be misinterpreted to mean that the lands are held in trust for the states, when the Court stated (pages 49 to 50):

> The Congress of the United States, in disposing of the public lands, has constantly acted upon the theory that those lands, whether in the interior, or on the coast, above high water mark, may be taken up by actual occupants, in order to encourage the settlement of the country; but that the navigable waters and the soils under them, whether within or above the ebb and flow of the tide, shall be and remain public highways; and, being chiefly valuable for the public purposes of commerce, navigation and fishery, and for the improvements necessary to secure and promote those purposes, shall not be granted away during the period of territorial government; but, unless in case of some international duty or public exigency, shall be held by the United States in trust for the future States, and shall vest in the several States, when organized and admitted into the Union, with all the powers and prerogatives appertaining to the older States in regard to such waters and soils within their respective jurisdictions; in short, shall not be disposed of piecemeal to individuals as private property, but shall be held as a whole for the purpose of being ultimately administered and dealt with for the public benefit by the State, after it shall have become a completely organized community.

It is apparent that whatever trust was found to exist was for the future state which should encompass the particular lands, not for the states as a whole. Moreover, though called a trust, the interest held by the United States was held to be such that it could alienate the lands involved, the Court stating (page 48):

> We cannot doubt, therefore, that Congress has the power to make grants of lands below high water mark of navigable waters in any Territory of the United States, whenever it becomes necessary to do so in order

Alabama's secondary contention (Brief, p. 42), that it has an interest in the submerged lands because "The fruits of the conduct of the foreign relations of the United States must be available to all the United States," is refuted by the whole course of our national history. The Louisiana Purchase (8 Stat. 200), although paid for with funds derived at least in part from the existing States (*cf.* 2 Stat. 245), was not held for the benefit of those States, but was divided into new territories and States. The area between the Pearl and Perdido Rivers, south of the 31st Parallel, acquired either as part of the Louisiana Purchase or from Spain, was not held for all the States but was added to Mississippi Territory (2 Stat. 734), later divided between the States of Mississippi and Alabama. Presumably Alabama does not regard that as an unconstitutional infringement on rights of the other States. The area ceded by Mexico in 1848 by the Treaty of Guadalupe Hidalgo (9 Stat. 922) was not held for the benefit of the existing States, but was divided into new territories and States; and the Gadsden Purchase (10 Stat. 1031) was not held for all the States but was added to the territories of Arizona and New Mexico. See Gannett, *Boundaries of the*

---

to perform international obligations, or to effect the improvement of such lands for the promotion and convenience of commerce with foreign nations and among the several States, or to carry out other public purposes appropriate to the objects for which the United States hold the Territory.

United States (3d ed. 1904, H. Doc. 678, 58th Cong., 2d Sess.), 19–25, 109–113, 123–136, 139. Yet all of these acquisitions were unquestionably the "fruits of the conduct of the foreign relations of the United States."

On analysis it seems clear that neither under the right of equal footing with the other States nor otherwise does Alabama have any more direct interest in the submerged lands adjacent to other States than it has in other property of those States, or of the United States, or of funds in the United States Treasury. It is not conceivable that this Court would have found that Massachusetts had standing to sue in *Massachusetts* v. *Mellon*, 262 U. S. 447, had it adopted the form of alleging that the funds which the defendant intended to expend were Treasury funds held in trust for all of the States. It is submitted that insofar as a sovereign state's interest in Federal assets is concerned, this case is indistinguishable from *Massachusetts* v. *Mellon*.

2. Alabama's sovereign right to equal footing cannot be violated by any inequality in width of marginal seas of, or wealth of assets in the areas claimed by, the defendant States as compared to the areas within Alabama's boundaries

Another of Alabama's arguments is that Alabama itself has a historic boundary extending only three miles from shore, while Texas, Louisiana, and Florida claim three leagues; and, that while the defendant States, or some of them,

have valuable natural resources,* the State of Alabama does not have its *pro rata* share. On this basis Alabama apparently asserts that the Submerged Lands Act gives too much to the defendant states and too little to Alabama, thus allegedly violating its constitutional right to "equal footing" (Paragraph XXXIV (B)).

This contention is also plainly unsound. "Equal footing" relates only to the political rights and sovereignty of a State, not to its property rights or to its boundaries. *United States* v. *Texas*, 339 U. S. 707, 716; *Stearns* v. *Minnesota*, 179 U. S. 223, 245. As this Court has said, "There can be no distinction between the several States of the Union in the character of the jurisdiction, sovereignty and dominion which they may possess and exercise over persons and subjects within their respective limits." *Illinois Central Railroad* v. *Illinois*, 146 U. S. 387, 434. But there is no necessary equality as to the territorial extent of their limits. Thus, even the original States have not claimed equal limits in the sea. For example, South Carolina has always claimed as its eastern boundary "the Atlantic Ocean" (first specified in Rev. Stats. S. C. (1872), Pt. I, tit. I, c. 1, § 1; now provided by S. C. Code (1952) § 39–1). Georgia originally claimed only to the ocean (Ga. Const. of 1798, Art. I, § 23; Watkins, *Dig. Laws of Ga.* (1800) 35), and now

* Paragraph XIX of the complaint fixes their value at in excess of $10,000,000,000.

claims only three *English* miles from low water, approximately .45 mile less than the three *geographic* miles more commonly used (Ga. Code Ann., § 15–101). California has also claimed only three *English* miles. *United States* v. *California*, 332 U. S. 19, 23. Rhode Island has, since 1872, claimed one marine league from the seashore at *high* water mark, rather than from *low* water mark as is commonly done (R. I. Gen. Stats. (1872) tit. I, c. 1, § 1; R. I. Gen. Laws (1938), tit. I, c. 1, § 1). For a collection of the various maritime boundaries claimed by coastal States, see Ireland, *Marginal Seas Around the States* (1940), 2 La. L. Rev. 252–293, 436–478, at 283–293 and 436–476.

Similar lack of uniformity exists as to river boundaries between States. The Potomac boundary between Virginia and Maryland is the low water mark on the Virginia side (see 20 Stat. 481; Gannett, *Boundaries of the United States* (3d ed., 1904, H. Doc. 678, 58th Cong., 2d Sess.) 89–92). Although the western boundary of Louisiana is the center of the Sabine River (2 Stat. 701), Texas came into the Union with its eastern boundary at the western bank of that river (1 Laws Repub. Tex. 133, adopting the boundary of the American-Spanish treaty, 8 Stat. 252), and it was not until 1848 that Congress permitted Texas to extend its eastern boundary to meet the Louisiana line in the center of the stream (9 Stat. 245). Other examples could be cited, but these will suffice to show that

the territorial extent of jurisdiction over boundary waters, whether coastal or inland, has never been considered a matter as to which States must stand on an equal footing. It necessarily follows that the "equal footing" principle does not give one State any standing to contest the nonadjacent boundaries of another State.*

Even less meritorious is the suggestion that Alabama's "equal footing" prevents Congress from giving to other States greater or more valuable rights of a proprietary nature in the marginal sea than it has given to Alabama. The mere fact that this Court has held such rights to belong in the first instance to the United States as an incident of its national sovereignty (*United States* v. *California*, 332 U. S. 19) demonstrates that they are not a constitutional attribute of state sovereignty. Consequently, there can be no constitutional guarantee of equality among the States regarding them. So far as the States are legally concerned, Congress, assuming it otherwise has power to dispose of these lands, can give them to some States and not to others, just as in 1846 it gave to Tennessee, alone of the public land States, all the public lands within its borders (Act of Aug. 6, 1846, 9 Stat. 66, amending the Act of

*Of course, where a common boundary is in dispute, a State has standing to sue the other State. E. g., *Louisiana* v. *Mississippi*, 202 U. S. 1; *ibid*, 222 U. S. 458; and other cases cited in Alabama's brief, p. 23.

Apr. 18, 1806, 2 Stat. 381), and from time to time relinquishes federal enclaves or public lands to some states while retaining others.[6] "Equal footing" gives Alabama no standing to complain that its marginal sea is less valuable or less extensive than Louisiana's or California's. The doctrine "does not, of course, include economic stature or standing. There has never been equality among the States in that sense." *United States* v. *Texas*, 339 U. S. 707, 716.[7]

[6] The Alabama Enabling Act (March 2, 1819, 3 Stat. 489) made the following provisions for land grants to the State: § 6 (p. 491)—For schools, Section 16, or lieu lands, in every township; All salt springs and appurtenant lands, not over 36 sections in all; For a seminary of learning, 36 sections, in addition to 36 sections already given the Territory; § 7 (p. 492)—For a seat of government, 1620 acres. The Swamp Land Act of September 28, 1850 (9 Stat. 519) § 4 granted to the States qualifying all swamp and overflowed lands within their boundaries. According to Hibbard, *History of the Public Land Policies* (1939), p. 273, fifteen states only received benefits under the Swamp Land Act and up to June 30, 1922, Alabama received patents to 418,633.53 acres (p. 275). The same author states that Alabama has received 911,627 acres of school land (p. 323).

[7] The Court goes on to say in the *Texas* opinion (at p. 716): "Some States when they entered the Union had within their boundaries tracts of land belonging to the Federal Government; others were sovereigns of their soil. Some had special agreements with the Federal Government governing property within their borders. See *Stearns* v. *Minnesota*, *supra*, [179 U. S. 223] pp. 243–245. Area, location, geology, and latitude have created great diversity in the economic aspects of the several States. The requirement of equal footing was designed not to wipe out these diversities but to create parity as respects political standing and sovereignty."

B. ALABAMA HAS NO STANDING TO SUE AS PARENS PATRIAE

By its complaint, Alabama also seeks to protect, as *parens patriae*, the alleged rights of its citizens in the submerged lands and their proceeds (Paragraph XXXV, pages 24–25). In support of this claim, the complaint alleges that the offshore lands and their proceeds are held by the United States subject to a trust not only for the benefit of the States but also for all the people of the United States (Paragraphs IX, X, XIII, XVI, and XXXI, pages 6–10, 21).

Alabama's contention that these lands and their proceeds are held in trust for all the people apparently rests on the statement of this Court in *United States* v. *California*, 332 U. S. 19, 40, that "The Government * * * holds its interests here as elsewhere in trust for all the people," and similar statements in cases concerning public lands (see Alabama's brief, pp. 31, 43, 49). As suggested under Point A, *supra*, pp. 10–11, the term "trust" is used in that context in a very broad sense, and means no more than that the properties are held in the public interest. In the *California* case, for example, the statement was made to explain that, because of the public interest, the rights of the Government should not be prejudiced by the laches of federal officers in asserting them. To say that the public has such an interest in property held by the Government is very different from saying that the property constitutes the corpus of a trust subject to the supervision and control of a court of

equity as are trusts in the strict sense. By its use of the phrase "here as elsewhere" in the *California* opinion, this Court clearly indicated that it did not consider that the offshore lands were held under any different or stricter "trust" than are all properties of the Government. The authorities cited under Point II, *infra*, pp. 22–25, 29–30, to show that the United States has complete power to dispose of this property, indicate that it does not hold them "in trust" for the citizens of the States or of the United States, in any judicially enforceable sense.

However, even if the citizens of Alabama were beneficiaries of an actual trust of all the property held by the Federal Government, the State of Alabama lacks standing to sue these defendants to protect that interest of its citizens, as *parens patriae*. There are, of course, various circumstances under which a State may act as *parens patriae* to protect the rights of its citizens. In that capacity it may, in a proper case, sue other States, as in *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 592, or private parties, as in *Georgia* v. *Pennsylvania R. Co.*, 324 U. S. 439, 445–452. But in the relations of citizens to the Federal Government they are represented by that Government and not by the States, and a State may not maintain a suit as *parens patriae* to protect rights asserted for its citizens in that relationship. *Massachusetts* v. *Mellon*, 262 U. S. 447, 485–486; *Florida* v. *Mellon*, 273 U. S. 12, 18. See *Georgia*

v. *Pennsylvania R. Co.*, 324 U. S. 439, 446; *Hopkins Savings Assn.* v. *Cleary*, 296 U. S. 315, 341.

Alabama asserts (Brief, p. 40), that "the individual defendants in this case are not joined because they are asserting any rights on behalf of the Federal Government. They are joined only because of their proposed acquiescence and cooperation in the unlawful claims of the defendant states." But, the action which paragraph 4 of the prayer seeks to enjoin—disbursement of funds in the Treasury of the United States—would clearly be action in an official capacity, pursuant to the terms of the Submerged Lands Act; and the asserted rights of Alabama's citizens with respect to these funds, as against these defendants, concern their "relations with the Federal Government" in exactly the same sense as did the rights asserted by Massachusetts, on behalf of its citizens, in seeking to enjoin federal officials from carrying out the provisions of the federal Maternity Act of 1921. *Massachusetts* v. *Mellon*, 262 U. S. 447, 485–486.* In *Hopkins Savings Assn.* v. *Cleary*, 296 U. S. 315, 341, this Court re-

* Alabama relies heavily on *Georgia* v. *Pennsylvania R. Co.*, 324 U. S. 439 (see Alabama's Brief, pp. 28–29, 38–40), but in that case the Court expressly pointed out that "This is not a suit like those in *Massachusetts* v. *Mellon* and *Florida* v. *Mellon*, *supra*, where a State sought to protect her citizens from the operation of federal statutes" (at pp. 446–447) alleged to be invalid. In its claim of a right to sue as *parens patriae*, Alabama is simply attacking a federal statute on behalf of its citizens, just as Massachusetts and Florida sought to do.

affirmed the principle that a State lacks standing to sue in such a case, distinguishing the situation where a State sought to protect constitutional rights of its citizens "against the unlawful acts of corporations created by the state itself." The Federal Government, and only the Federal Government, has standing to represent its citizens, as *parens patriae,* in asserting their federal rights against federal officials.

In the case of *Missouri* v. *Holland,* 252 U. S. 416, relied on by Alabama as establishing a contrary rule (Brief, p. 39), the State did not sue as *parens patriae* to protect rights of its citizens, but sued to protect its own jurisdiction and property. The Court there said, "The ground of the bill is that the statute is an unconstitutional interference with the rights reserved to the States by the Tenth Amendment, and that the acts of the defendant done and threatened under that authority invade the sovereign right of the State and contravene its will manifested in statutes. The State also alleges a pecuniary interest, as owner of the wild birds within its borders and otherwise, admitted by the Government to be sufficient, but it is enough that the bill is a reasonable and proper means to assert the alleged quasi sovereign rights of a State" (252 U. S. at 431). On its face, the case is no authority for a suit brought by a State as *parens patriae* to assert rights of its citizens.

In short, Alabama has no standing to sue either as a sovereign state to protect its right of equal

footing or as *parens patriae* to protect rights of its citizens. And since, even assuming that the Submerged Lands Act is unconstitutional or is being misapplied, Alabama is not a proper party to lay the issue before this Court, its motion for leave to file should be denied. *Florida* v. *Mellon*, 273 U. S. 12.

II

THE COMPLAINT FAILS TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED AGAINST THESE DEFENDANTS

A. The essence of the complaint is that Congress exceeded its constitutional power when it granted to the individual states the natural resources of, and the submerged lands underlying, their navigable waters. In order to support this argument, it would be necessary to read some implied restriction into Article 4, § 3 of the Constitution which provides:

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; * * *.

On the contrary, this Court has repeatedly recognized that the interest of the United States in its property is subject to the Government's absolute power of disposal. "* * * No one has ever contested its supreme right to dispose of its own property in its own way." *McClung* v. *Silliman*,

6 Wheat. 598, 605. "The right of the United States to dispose of her own property is undisputed, and to make rules by which the lands of the government may be sold *or given away* is acknowledged * * *." *Lamb* v. *Davenport,* 18 Wall. 307, 314 (emphasis added). "* * * this power is vested in congress without limitation; * * *. The disposal must be left to the discretion of congress." *United States* v. *Gratiot,* 14 Pet. 526, 537–538. Similarly, in *United States v. San Francisco,* 310 U. S. 16, 29, this Court said, "Article 4, § 3, Cl. 2 of the Constitution provides that 'The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory and other Property belonging to the United States.' The power over the public land thus entrusted to Congress is without limitations. 'And it is not for the courts to say how that trust shall be administered. That is for Congress to determine.'" For 160 years Congress has been granting federal lands and other property without any suggestion that its power to do so is fettered or limited.*

---

*Alabama's theory that the Federal Government can be forced by the courts to retain property which it wishes to cede opens doors long locked and barred by history. Maryland could have attacked the cession of part of the District of Columbia to Virginia in 1846; another State (or perhaps an individual citizen) could sue to prevent the freeing of the Philippines, or of Puerto Rico (if that should come to pass). The hundreds of grants of federal lands and structures, of the type made by each Congress (See *e. g.*, 67 Stat. 26, 41, 52, 53, 54, 82, 182, 203—all 83d Congress), could have

The submerged lands here involved were not "public lands" in the technical sense (cf. *Borax, Ltd.*, v. *Los Angeles*, 296 U. S. 10, 17), but that they were subject to the same unlimited power of disposition was indicated in *United States* v. *California*, 332 U. S. 19, 27, where this Court said with reference to some of the very land here in dispute:

> * * * Article IV, § 3, Cl. 2 of the Constitution vests in Congress "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States * * *". We have said that the constitutional power of Congress in this respect is without limitation. *United States* v. *San Francisco*, 310 U. S. 16, 29–30. Thus, neither the courts nor the executive agencies could proceed contrary to an Act of Congress in this congressional area of national power.

The Court went on to hold that Congress had not acted to relinquish federal rights in this area, saying (332 U. S. at 28):

> * * * both Houses of Congress passed a joint resolution quitclaiming to the adjacent states a three-mile belt of all land situated under the ocean beyond the low water mark, except those which the Government had previously acquired by purchase, condemnation, or donation. This

---

all been attacked. For a partial list of grants to Alabama see footnote 6 *supra*.

> joint resolution was vetoed by the President. His veto was sustained. Plainly, the resolution does not represent an exercise of the constitutional power of Congress to dispose of public property under Article IV, § 3, Cl. 2.

Following, as it does, the Court's statements as to the absolute character of the congressional power to dispose of federal property, this certainly implies that that power extends to the precise sort of disposition, and the precise property, here involved, and that the power had merely failed of effective exercise at that time by reason of the presidential veto. Certainly there is not the slightest indication that the Court considered the submerged lands to be subject to any "trust" for the States or for the people which would have made such a disposition invalid.

Alabama quotes at length (Brief, pages 44–46) from the opinion of this Court in *Illinois Central Railroad* v. *Illinois*, 146 U. S. 387, 452–456, as indicating that lands under navigable waters are held under a trust for the public such as to invalidate a transfer of the sort here involved. For several reasons, the conclusion drawn is not sound.

In the first place, this Court has held that "the extent of the power of the State and city to part with property under navigable waters to private persons, free from subsequent regulatory control

of the water over the land and the land itself * * * is a *state question*, and we must determine it from the *law of the State* * * *." *Appleby* v. *City of New York*, 271 U. S. 364, 380 (emphasis added). Accord, *Illinois Central Railroad* v. *Chicago*, 176 U. S. 646, 659. The conclusion reached in *Illinois Central Railroad* v. *Illinois*, 146 U. S. 387, "was necessarily a statement of Illinois law" (*Appleby* v. *City of New York*, 271 U. S. 364, 395), and therefore cannot control or even influence the federal issue of Congressional power over the submerged lands. But even if the rule of the *Illinois Central* case is to be given general application, it does not invalidate the grant made by the Submerged Lands Act.

In the *Illinois Central* case the state legislature had first granted to the railroad submerged lands under Lake Michigan, and had later repealed the grant. The Court held that the repeal was effective. Describing the magnitude of the grant before it, the Court said, "Any grant of the kind is necessarily revocable, and the exercise of the trust by which the property was held by the State can be resumed at any time" (146 U. S. at 455). "There can be no irrepealable contract in a conveyance of property by a grantor in disregard of a public trust, under which he was bound to hold and manage it" (146 U. S. at 460). The Court

concluded that phase of its discussion with the statement:

> It follows from the views expressed, and it is so declared and adjudged, that the State of Illinois is the owner in fee of the submerged lands constituting the bed of Lake Michigan, which the third section of the act of April 16, 1869, purported to grant to the Illinois Central Railroad Company, and that the act of April 15, 1873, repealing the same is valid and effective for the purpose of restoring to the State the same control, dominion and ownership of said lands that it had prior to the passage of the act of April 16, 1869. [146 U. S. at 463–464.]

Plainly, the Court had before it, and therefore decided, only the question of whether the legislature had effectively revoked its former grant. The Court did not have to consider whether the former grant was wholly ineffective; and the opinion as a whole indicates that the discussion of the invalidity of the former grant was actually directed only to the invalidity of its claimed irrevocability. Since Congress has made no attempt to revoke the Submerged Lands Act, the Illinois Central decision would not be controlling or persuasive here even if it were held to announce a federal rule of law.

Moreover, in the *Illinois Central* opinion this Court recurred frequently to the fact that the grant had been to a private corporation:

> A corporation created for one purpose, the construction and operation of a railroad between designated points, is, by the act, converted into a corporation to manage and practically control the harbor of Chicago, not simply for its own purpose as a railroad corporation, but for its own profit generally. [146 U. S. at 451.]
>
> The harbor of Chicago is of immense value to the people of the State of Illinois in the facilities it affords to its vast and constantly increasing commerce; and the idea that its legislature can deprive the State of control over its bed and waters and place the same in the hands of a private corporation created for a different purpose, one limited to transportation of passengers and freight between distant points and the city, is a proposition that cannot be defended. [146 U. S. at 454.]
>
> * * * It is hardly conceivable that the legislature can divest the State of the control and management of this harbor and vest it absolutely in a private corporation. [146 U. S. at 454–455.]

Obviously, entirely different considerations are involved in the present case, where the transfer is to States which themselves hold their property in the public interest. That distinction was recognised by this Court in *Appleby* v. *City of New York*, 271 U. S. 364, sustaining a grant by the

State to the city of the submerged lands surrounding the city, and a grant of part of them by the city to individuals. The Court sustained the State's grant to the city, quoting from *Coxe* v. *State*, 144 N. Y. 396, 407, that "the extensive grant to the city of New York of the lands under water below the shore line around Manhattan island * * * was a grant to a municipality, constituting a political division of the state, for the promotion of the commercial prosperity of the city and consequently of the people of the state" (271 U. S. at 395), and distinguishing the *Illinois Central* case as a holding that "it was not conceivable that a legislature could divest the State of this [submerged area] absolutely in the interest of a private corporation * * *." (271 U. S. at 393.)

Since the *Illinois Central* decision the Court has repeatedly recognized that States and the United States do have power to dispose of the lands under their navigable waters. Thus, in *Shively* v. *Bowlby*, 152 U. S. 1, 46–47, the Court referred to the *Illinois Central* case as recognising as the settled law of this country that the States own the lands under navigable waters within their boundaries "with the consequent right to use or dispose of any portion thereof, when that can be done without substantial impairment of the interest of the public in such waters," and said, "Notwithstanding the *dicta* contained in some of the opinions of this court, already quoted, to the effect that Congress has no power to grant any land

below high water mark of navigable waters in a Territory of the United States, it is evident that this is not strictly true." See also *Appleby* v. *City of New York, supra.* The validity of state law giving all land under navigable waters to the abutting riparian owners has likewise been recognised. *United States* v. *Willow River Co.*, 324 U. S. 499, 503; see *Donnelly* v. *United States*, 228 U. S. 243, 262. The grant of offshore lands to abutting States is certainly more analogous to such a disposition than it is to the railroad grant involved in the *Illinois Central* case; and with the added justification found in the governmental character of the grantees, the grant must be considered altogether outside of the condemnation of the *Illinois Central* rule.

B. The only significant relief sought against the four federal defendants is an injunction against paying out monies now held by the Federal Government (see paragraph 4 of the prayer), and it is therefore appropriate to point out that, whatever Alabama may say about the disposition of the submerged lands in the Submerged Lands Act, it surely cannot attack a Congressional disposition of the federal funds which have been collected since 1947 from the oil leases in these areas. Congress has determined to grant these accumulated monies to the adjacent states, just as it has regularly made grants to individual states or groups of states for many and varied

purposes and reasons. Against the background of the submerged lands controversy of the last decade and the weighty arguments put forth by the proponents of state control of these areas and their proceeds, it cannot be said that the legislative choice was "clearly wrong, a display of arbitrary power, not an exercise of judgment." *Helvering* v. *Davis*, 301 U. S. 619, 640. But unless those who oppose a federal grant of money show "that by no reasonable possibility can the challenged legislation fall within the wide range of discretion permitted to the Congress", they cannot begin to attack its validity. *United States* v. *Butler*, 297 U. S. 1, 67.

C. In addition to the assertion that the Submerged Lands Act is unconstitutional by reason of its grants to the individual states, Alabama also complains of the extent of the claim made by some of the defendant States under the Act (Paragraphs XXII, XXV, and XXVIII). The basis of this complaint is that the limit of the territorial claim of the United States, and therefore Alabama, is three miles and that therefore any State claim to a more extensive area is invalid (Alabama Brief, p. 65). But as Alabama itself points out, the Submerged Lands Act (Section 2 (b), 3 (a)) grants the states lands and resources only within their historic boundaries (Paragraph XXXVII). Therefore, under the Act itself only three miles may be considered as

granted, if Alabama is correct that that is the historic limit to the territory of the United States and therefore of the defendant States. The Act does not purport to establish a three-league boundary in the Gulf of Mexico if such a boundary is inconsistent with historic practice and understanding. It appears, therefore, that Alabama is alleging claims by the defendant States which, if Alabama is right, are not at all authorised by the Submerged Lands Act. There is, therefore, no occasion at this time to consider the validity of the "historic boundary" provisions of the Act. Moreover, this is not asserted as a claim against the individual defendants, and therefore cannot state a cause of action as against them."

Where, as here, a complaint sought to be filed fails to allege facts justifying the granting of relief, so that the complaint, if filed, would have to be dismissed, leave to file should be denied. *Alabama* v. *Arizona*, 291 U. S. 286. Accord: *Arizona* v. *California*, 292 U. S. 341. See *Georgia* v. *Pennsylvania R. Co.*, 324 U. S. 439, 445.

"If Alabama seeks to rely on the allegation in Paragraph XXXIII that the individual defendants will acquiesce in the defendant States' claim and therefore in this allegedly unauthorised claim, the answer is that the allegation constitutes a mere prediction without the statement of any facts as a foundation and must be disregarded. The Court should not be moved to take jurisdiction by such general and unsupported allegations of "acquiescence."

III

THIS IS IN LEGAL EFFECT A SUIT AGAINST THE UNITED STATES, WHICH HAS NOT CONSENTED TO SUCH SUIT

Despite Alabama's contention (Brief, pages 72–74), this suit is not one that can be maintained against these individual defendants. The case attempted to be stated against them is, in effect, one against the United States, and as such cannot be maintained in the absence of congressional consent.

The principles involved have recently been reviewed by this Court in the case of *Larson* v. *Domestic & Foreign Corp.*, 337 U. S. 682. In general, a suit cannot be maintained to enjoin the official action of a public officer, since the sovereign can act only through its agents, and to enjoin official action is in effect to enjoin the sovereign. This is subject to two exceptions: where the officer is acting beyond the scope of his statutory authority, or where the statute relied on by him is unconstitutional. In such cases, his action, although purporting to be that of the sovereign, is considered not so in fact, and may ordinarily be enjoined. *Larson* v. *Domestic & Foreign Corp.*, 337 U. S. 682, 689–690. But, as this Court was careful to add, "Of course, a suit may fail, as one against the sovereign, even if it is claimed that the

officer being sued has acted unconstitutionally or beyond his statutory powers, if the relief requestion can not be granted by merely ordering the cessation of the conduct complained of but will require affirmative action by the sovereign or the disposition of unquestionably sovereign property." *Larson* v. *Domestic & Foreign Corp.*, 337 U. S. 682, 691.

That statement follows earlier holdings of this Court. In *North Carolina* v. *Temple*, 134 U. S. 22, where a state statute forbade the audit of claims based on certain state bonds, or the levy of a tax for their payment as required by the earlier statute under which they were issued, a bondholder sued the State and the state auditor to compel levy of the tax and payment of the bonds, on the ground that the prohibitory statute was unconstitutional. This Court directed dismissal of the suit, saying (134 U. S. at 30), "We think it perfectly clear that the suit against the auditor in this case was virtually a suit against the State of North Carolina." In *Naganab* v. *Hitchcock*, 202 U. S. 473, an Indian, a member of a tribe which had conveyed certain lands to the United States to hold in trust for the tribe, sued the Secretary of the Interior to enjoin him from disposing of those lands in the manner provided by a later act of Congress, on the ground that such disposal would unconstitutionally deprive the plaintiff and other members of the tribe of their rights in the lands. The Court held that the action was prop-

erly dismissed for lack of jurisdiction, since the United States was the real party in interest and had not consented to be sued. The *Naganab* case is indistinguishable in principle from the one at bar, and must be considered dispositive of it. Its holding was reaffirmed in *Land* v. *Dollar*, 330 U. S. 731, where although suit was permitted, this Court was careful to distinguish the case before it from one "where the sovereign admittedly has title to property and is sued by those who seek to compel a conveyance or to enjoin disposition of the property, the adverse claims being based on an allegedly superior equity or on rights arising under Acts of Congress." 330 U. S. at 737–738.[11]

The present case falls squarely within the limits of this line of authority. Alabama does not merely admit that the United States has title to the lands and moneys in question; it affirmatively asserts that the United States has such title, as an

[11] To the same effect, see *Louisiana* v. *Garfield*, 211 U. S. 70, 72–73, 77–78; *New Mexico* v. *Lane*, 243 U. S. 52, 58; *Minnesota* v. *United States*, 305 U. S. 382, 386; *Ford Co.* v. *Dept. of Treasury*, 323 U. S. 459, 464; *Great Northern Ins. Co.* v. *Read*, 322 U. S. 47, 50; *Cummings* v. *Deutsche Bank*, 300 U. S. 115, 118; *Leather* v. *White*, 266 U. S. 592, affirming 296 Fed. 477 (C. A. 7); *Lankford* v. *Platte Iron Works*, 235 U. S. 461; *Goldberg* v. *Daniels*, 231 U. S. 218; *Hopkins* v. *Clemson College*, 221 U. S. 636, 648–649; *Oregon* v. *Hitchcock*, 202 U. S. 60, 69–70; *Minnesota* v. *Hitchcock*, 185 U. S. 373, 386–387; *Stanley* v. *Schwalby*, 162 U. S. 255, 270, 272; *Belknap* v. *Schild*, 161 U. S. 10; *Christian* v. *Atlantic & N. C. R. R. Co.*, 133 U. S. 233; *Cunningham* v. *Macon & Brunswick R. R. Co.*, 109 U. S. 446, 457; *Carr* v. *United States*, 98 U. S. 433, 437–438.

essential element of the cause of action alleged (Paragraphs IX, X, XIII and XVI). Part of the relief sought against these defendants is that they be permanently enjoined from making any payments of the moneys (Paragraph 4 of the prayer). It would be hard to imagine a clearer case of an attempt to interfere with official conduct in the management of governmental property. A suit seeking such relief is necessarily a suit against the Government. *Larson* v. *Domestic & Foreign Corp.*, 337 U. S. 682, 689; *Oregon* v. *Hitchcock*, 202 U. S. 60, 68–69; *Minnesota* v. *Hitchcock*, 185 U. S. 373, 384–388; and other cases cited in footnote 11, *supra*, p. 35. As this Court has said, "no injunction can be issued against officers of a State, to restrain or control the use of property already in the possession of the State, or money in its treasury when the suit is commenced", and the same rule is applicable to the United States. *Belknap* v. *Schild*, 161 U. S. 10, 18."

" Other relief sought against these defendants is that they be permanently enjoined from "acquiescing" in the claims of the defendant States (Paragraph 6 of the prayer). Just what such relief would amount to is hardly clear; but Webster defines "acquiesce" as "to accept or comply tacitly or passively, without implying assent or agreement." Thus, it seems that Alabama may be attempting to have these defendants forbidden to remain passive. While negative in form, this would in effect be a positive command that they be active, that is, that they affirmatively oppose the claims of the defendant States. And clearly the action sought is not mere assertion by these defendants, as individuals, of dis-

It makes no difference that the plaintiff is not seeking to secure title or possession of property for itself. A suit intended only to prevent officials from disposing of government property is still such an interference with government property as to make the suit in substance one against the Government. *Naganab* v. *Hitchcock*, 202 U. S. 473; *Minnesota* v. *Hitchcock*, 185 U. S. 373. Cf. *Seiden* v. *Larson*, 188 F. 2d 661 (C. A. D. C.), certiorari denied, 341 U. S. 950; *American Dredging Co.* v. *Cochrane*, 190 F. 2d 106 (C. A. D. C.).

The cases relied on by Alabama (Brief, pp. 73–74) are readily distinguishable. *Philadelphia Co.* v. *Stimson*, 223 U. S. 605, was merely a suit to prevent the defendant Secretary of War from taking action detrimental to property which admittedly belonged to the plaintiff; and *Georgia R. Co.* v. *Redwine*, 342 U. S. 299, was a suit to enjoin the state Revenue Commissioner from proceeding to collect an unconstitutional tax, where the remedy at law was not adequate. Neither case sought to interfere with the use or disposal of governmental property. That is the nature of this

---

approval of the claims of the States, but rather active opposition to those claims through official conduct. But to require affirmative, official action by a public officer is to require action by the sovereign itself, which can only act through its officers; and a suit seeking such relief is a suit against the sovereign, which cannot be maintained without its consent even where it is asserted that the defendant is infringing constitutional rights of the plaintiff. *North Carolina* v. *Temple*, 134 U. S. 22, 30; *Larson* v. *Domestic & Foreign Corp.*, 337 U. S. 682, 691.

suit; and as the Court has repeatedly recognized (see *supra*, pp. 33–37), such a suit is in effect a suit against the sovereign and cannot be maintained in the absence of the sovereign's consent, even where the plaintiff asserts invasion of his constitutional rights.

Where a petition sought to be filed in this Court states in substance, though not in form, a cause of action against the United States, which has not consented thereto, leave to file should be denied. *Louisiana* v. *McAdoo*, 234 U. S. 627.

IV

THE UNITED STATES IS AN INDISPENSABLE PARTY

In cases of this sort, to inquire whether the sovereign is an indispensable party is but to phrase in a different way the same question as is raised in considering whether the suit should be deemed one against the sovereign. But some of the cases have been decided on that basis and they also support our position that the motion here should be denied.

Of this group of cases, the one most closely resembling that now before the Court is *Morrison* v. *Work*, 266 U. S. 481. There a Chippewa Indian of Minnesota, for himself and as representative of other members of his tribe, sued the Secretary of the Interior and other federal officials (1) to en-

join their management and disposal of certain tribal property in a manner provided for by an act of Congress which was alleged to infringe constitutional rights of the Indians, (2) to enjoin management and disposal of the property in a way alleged to rest on a misconstruction of the applicable statute, and (3) to compel certain allotments to other Indians. The suit was dismissed on the ground that the United States was an indispensable party, and the Court's reasoning is controlling here. Of the first claim, the Court said:

> The United States is now exercising, under the claim that the property is tribal, the powers of a guardian and of a trustee in possession. Morrison's contention is that, by virtue of the Act of 1889 and the agreements made thereunder, the ceded lands ceased to be tribal property and the rights of the Indians in the lands and in the fund to be formed became fixed as individual property. The Court of Appeals held this contention to be unfounded. We have no occasion to determine whether it erred in so ruling. The claim of the United States is, at least, a substantial one. To interfere with its management and disposition of the lands or the funds by enjoining its officials, would interfere with the performance of governmental functions and vitally affect interests of the United States. It is, therefore, an indispensable

party to this suit. It was not joined as defendant. Nor could it have been, as Congress has not consented that it be sued. [266 U. S. at 485-486.]

As to the second claim, that the defendants were misconstruing the act of Congress, this Court said:

The case at bar is unlike those in which relief by injunction has been granted against the head of an executive department, or other officer, of the Government to enjoin an official act on the ground that it was not within the authority conferred, or that it was an improper exercise of such authority, or that Congress lacked the power to confer the authority exercised. In those cases the act complained of either involved an invasion or denial of a definite right of the plaintiff, or it operated to cast a cloud upon his property. * * * Morrison and the other Chippewas have no right of that character. The lands ceded are the property of the United States. It has, confessedly, power to dispose of them. It assumed the obligation of doing this properly * * *. * * * it is the United States, not the officials, which is under obligation to account to the Indians therefor. In other words, the right of the Indians is merely to have the United States administer properly the trust assumed. It resembles the general right of every citizen to have the Government administered ac-

> cording to law and the public moneys properly applied. Courts have no power, under the circumstances here presented, to interfere with the performance of the functions committed to an executive department of the Government by a suit to which the United States is not, and cannot be made, a party. [266 U. S. at 486–488.]

In principle, the case at bar is in no way distinguishable from the *Morrison* case, and the holding must be the same.

A more recent case employing the rationale that the United States was an indispensable party is *Mine Safety Co.* v. *Forrestal*, 326 U. S. 371. The plaintiff, claiming the Renegotiation Act to be unconstitutional, sued the Under Secretary of the Navy to enjoin him from setting off sums claimed under that act against sums due to the plaintiff from the Government. This Court said, "* * * though appellant denies it, the conclusion is inescapable that the suit is essentially one designed to reach money which the government owns. Under these circumstances the government is an indispensable party, *Minnesota* v. *United States*, 305 U. S. 382, 388, even though the Renegotiation Act under which the Secretary proposed to act might be held unconstitutional" (326 U. S. at 375).

See also *Louisiana* v. *Garfield*, 211 U. S. 70, where a bill against the Secretary of the Interior,

seeking to establish the title of the State to lands under the Swamp Land Act of 1849, was dismissed because it raised substantial questions of law and fact on which the United States would have to be heard; *Belknap* v. *Schild*, 161 U. S. 10, where a bill against certain federal officials to enjoin their use of a caisson gate, claimed to infringe a patent held by the plaintiff, was dismissed because the gate was owned and used by the United States, which was therefore the only real party in interest and an indispensable party to enable the court to grant the relief sought; cf. *United States* v. *Alabama*, 313 U. S. 274, holding the United States an indispensable party to proceedings for the tax sale of lands in which it has an interest.

It is of course clear that "A bill of complaint will not be entertained which, if filed, could only be dismissed because of the absence of the United States as a party." *Arizona* v. *California*, 298 U. S. 558, 572.

CONCLUSION

It is submitted that Alabama has no standing to sue; that the complaint fails to state a claim on which relief could be granted against these defendants; that the suit is against the United States, which has not consented to be sued; that the United States is an indispensable party and is not, and cannot be, joined. For each and all of

these reasons leave to file the complaint should be denied.

Respectfully submitted.

HERBERT BROWNELL, Jr.,
Attorney General.

ROBERT L. STERN,
Acting Solicitor General.

J. LEE RANKIN,
Assistant Attorney General.

OSCAR H. DAVIS,
JOHN F. DAVIS,
Special Assistants to the Attorney General.

GEORGE S. SWARTH,
Attorney.

DECEMBER 1953.

U. S. GOVERNMENT PRINTING OFFICE: 1953